



TO: All DWD Managers and Supervisors
UI Appellate Division
Review Board

FROM: Alan D. Degner, Commissioner

DATE: April 11, 2003

SUBJECT: DWD Policy 2002-29
Overpayment Waiver Policy

Re: All UI funded sources administered by DWD

PURPOSE: To modify guidelines for discretionary waiver of benefit overpayments and establish guidelines for discretionary waiver of Temporary Extended Unemployment Compensation (TEUC) benefit overpayments.

RECISSIONS: DWD Communication # 2001-08, Overpayment Waiver Policy

CONTENT:

Eligibility for Waiver of Overpayment of Regular Benefits: In accordance with IC 22-4-13-1 (f), an overpayment established after July 1, 2001 **may** be waived only if all the following circumstances are met:

1. The benefits were received following a determination of eligibility or appeals decision that allowed benefits, while waiting for an appeal decision from a higher authority (either from an Administrative Law Judge or the Review Board).
2. The subsequent appeal decision denied benefits.
3. The employer(s) being charged for receipt of the benefits was NOT a reimbursable employer.

Eligibility for Waiver of TEUC Benefits: In accordance with the Temporary Extended Unemployment Act of 2002, a waiver of TEUC benefit overpayments **may** be granted under the following conditions:

The payment of such TEUC was without fault on the part of the individual; and repayment would be contrary to equity and good conscience.

1. In determining whether fault exists, the following factors must be considered:
 - a. Whether the claimant made an inaccurate statement or representation in connection with the application for benefits that resulted in the overpayment, and whether the claimant knew or should have known it was inaccurate.

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- b. Whether the claimant failed or caused another to fail to disclose a significant fact in connection with the application for TEUC that resulted in the overpayment, and whether the claimant knew or should have known that the fact was significant and should have been disclosed.
 - c. Whether the claimant knew or could have been expected to know that he/she was not entitled to the TEUC payment.
 - d. Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the claimant or of which the claimant had knowledge, and which was erroneous or inaccurate or otherwise wrong.
2. In determining whether equity and good conscience exists, the following factors shall be considered:
 - a. Whether the overpayment was the result of a decision on appeal.
 - b. Whether the state agency had given notice to the claimant that he/she might be required to repay the overpayment in the result of a reversal of the eligibility determination on appeal.
 - c. Whether recovery of the overpayment will cause financial hardship to the individual.
 3. If the primary conditions (related to fault and equity) described above are also met, then the following may serve as additional factors favoring waiver:
 - a. Agency and/or employer error played a role in the generation of the overpayment.
 - b. Significant delay in the receipt of an appellate or Review Board determination.

Procedure: Claimant must submit a written request to waive the overpayment within 45 days of the mailing date of the Administrative Law Judge or Review Board decision, whichever is applicable. This request may be made using the DWD Waiver Request Guidelines that can be obtained in the Local Office, or with a letter. The request will be submitted to DWD, Benefit Payment Control. It must be legible, and must include the following:

1. Name, SSN, appeal case #, and employer name.
2. Statement of circumstances, including why the decision was reversed and why the claimant believes that he/she was without fault in the reversal.
3. Copies of all decisions related to the matter, including a copy of the initial deputy decision, the appellate hearing decision and Review Board decision, if applicable.
4. Statement of economic hardship that would result from repayment, which includes, at a minimum, the following information: whether the claimant has found subsequent employment, and approximate monthly household expenses vs. monthly household income (include all relevant sources of income, such as spouse's pay, child support, etc.).
5. Statement of any mitigating or extenuating circumstances involved, if applicable.

All requests must be sent to: DWD Benefit Payment Control Unit
10 North Senate Avenue, Room SE 203
Indianapolis, Indiana 46204

The DWD Legal Support Unit will be responsible for decisions regarding the waiver of overpayments. Such decision will be conveyed to the claimant by letter and if necessary, to Benefit Payment Control for adjustment to the overpayment. The decisions are not appealable.

OWNERSHIP: DWD Benefit Payment Control

EFFECTIVE DATE: Immediately upon request.

REVIEW DATE: April 11, 2005

ACTION: Make all employees and claimants aware of the policy. Advise a claimant inquiring about an overpayment that the Review Board decision, if applicable, should be final before submitting a request for consideration for waiver. Any questions regarding this communication may be addressed to Steve Riggins, Benefit Payment Control Supervisor, at (317) 232-7490, or Kristy Musall, Staff Attorney, at (317) 233-6194.